

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. DEPARTMENT OF LABOR  
AND  
THE U.S. ARMY CORPS OF ENGINEERS

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Army Corps of Engineers ("USACE") and the Department of Labor ("DOL") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of USACE technical assistance and related goods and services. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and the FY2001 Consolidated Appropriations Act, in which the Conference agreement includes \$45,000,000 for, among other things, the development of "social safety net programs".

ARTICLE II - SCOPE

The U.S. Department of Labor (DOL) and the U.S. Department of Defense (DOD) are providing technical assistance to the Nigerian Armed Force Resettlement Center (NAFRC) to smooth the transition of those being separated into subsequent civilian life. NAFRC has asked for support in upgrading their water supply, power supply, and sewage system. In view of its comparative engineering expertise and familiarity with military affairs, DOL is seeking the U.S. Army's Corps of Engineers (USACE) support initially in analyzing and, possibly subsequently, implementing these tasks.

Goods and services which the USACE may provide under this MOA include reviewing assessment reports prepared for the NAFRC the concerning condition of existing potable water systems, sewage treatment systems, and the electrical systems and performing a field survey to evaluate/determine the work required to refurbish or replace these systems for NAFRC. The systems need to be repaired or major portions replaced to place them in operational conditions to meet both World Health standards and operational standards necessary for NAFRC to function appropriately for the Nigerian Armed Forces.

USACE will deliver a written report to DOL describing the detailed results of the survey and assessment of the proposed work. In preparing cost estimates for this work, USACE will include prioritization of marginal costs for each of the three analyses (water, sewage, electrical) so that NAFRC and its U.S. counterparts will have options to consider for different levels of funding and development cutoffs.

### ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between USACE and the DOL, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The Transatlantic Programs Center shall serve as the USACE Project Manager for this work.

### ARTICLE IV - RESPONSIBILITIES OF THE PARTIES

#### A. Responsibilities of the U.S. Army Corps of Engineers

1. USACE will use its best efforts to field the team as soon as possible after the final signing of this agreement and no later than two weeks after that date. The report is due to DOL three weeks after the commencement of the fieldwork.
2. USACE shall provide the DOL with goods or services in accordance with the purpose, terms, and conditions and with specific requirements set forth in this MOA.
3. USACE will, with the assistance of DOL, coordinate with the representatives of the Nigeria and of the United States in Nigeria to gain appropriate country clearances and access to the site.
4. USACE shall use its best efforts to provide goods or services either by contract or by in-house efforts.
5. USACE shall provide monthly financial reports to the DOL. The financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures. USACE shall inform the DOL of all contracts entered into under this agreement.

#### B. Responsibilities of the Department Of Labor

1. The DOL shall pay all costs associated with USACE's provisions of goods or services under this MOA and shall provide funds to accomplish this work.
2. The DOL shall assist USACE in obtaining all necessary real estate interests and access to all work sites and support facilities, and shall assist in the coordination with and obtaining of any permits and/or approvals from Nigerian agencies and the U.S. government agencies, as necessary during the execution of this MOA.
3. The DOL shall make any material and equipment available to the DOL available to USACE to expedite execution of this agreement.
4. The DOL shall assist USACE in obtaining logistical and administrative services to include office space, housing, transportation, and similar services.

5. Unless existing agreements otherwise provide for the status of USACE personnel, the DOL shall assist in seeking accreditation for USACE personnel, including contractor personnel, at the same level that would be sought for DOL personnel performing similar functions and duties in Nigeria; provided, however, that the DOL shall notify USACE in any case when USACE personnel, including contractor personnel cannot be accredited, at a minimum, as members of the administrative and technical staff of the diplomatic mission of the United States in Nigeria. In the event the DOL and USACE are unable for any reason to secure necessary accreditation for USACE personnel, including contractor personnel, USACE may terminate this agreement

#### ARTICLE V - FUNDING

The estimated cost for USACE to perform this work is \$85,000. DOL shall pay all costs associated with the USACE's provision of goods or services under this MOA. The DOL Appropriation Code for these funds is 01-K400-RWBR-2599-FD282-000.

If in the execution of this work, USACE forecasts its actual costs to exceed the amount of funds available, it shall promptly notify the DOL of the amount of additional funds necessary to complete the work. The DOL shall either provide the additional funds to USACE, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work.

Within 90 days of completing this work, USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, USACE shall return to the DOL any funds advanced in excess of the actual costs as then known, or the DOL shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the DOL's duty in accordance with Article IX to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

#### ARTICLE VI - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by USACE shall be governed by USACE policies and procedures.

#### ARTICLE VII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by or against contractors arising under or relating to contracts awarded by USACE shall be resolved in accordance with Federal law and the terms of the

individual contract. USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals ("ASBCA"), or its successor, is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA, or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

USACE shall have full responsibility for defending and pursuing such claims and disputes and shall notify the DOL of any such claims and disputes within seven (7) business days after USACE receives or initiates notice of such claims and disputes. USACE shall be responsible for coordinating with the Department of Justice Commercial Litigation Branch as appropriate and afford the DOL an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

#### ARTICLE VIII - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the DOL and USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

#### ARTICLE IX — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to USACE's provision of goods or services under this MOA, USACE will accept accountability for its actions, but the DOL shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the DOL have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

#### ARTICLE X - PUBLIC INFORMATION

Justification and explanation of the DOL's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the DOL. USACE may provide, upon request of DOL, any assistance necessary to support the DOL's justification or explanations of the DOL's programs conducted under this MOA. In general, the DOL is responsible for all public information. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and

administration process. The DOL or USACE shall use its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to work under this MOA.

#### ARTICLE XI - MISCELLANEOUS

##### A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the DOL and USACE.

##### B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

##### C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

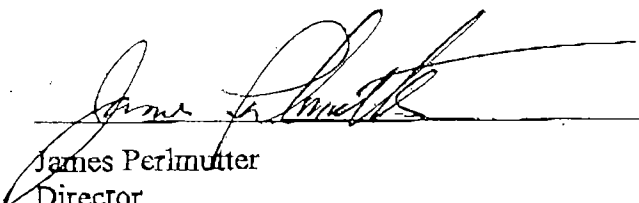
#### ARTICLE XII - AMENDMENT, MODIFICATION AND TERMINATION

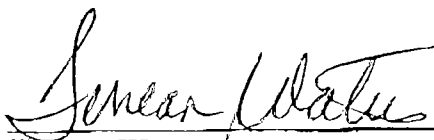
This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the DOL shall continue to be responsible for all costs incurred by USACE under this MOA and for the costs of closing out or transferring any on-going contracts.

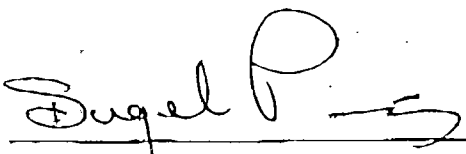
## ARTICLE XIII - EFFECTIVE DATE

This MOA shall be deemed effective on the date of the last signature below.

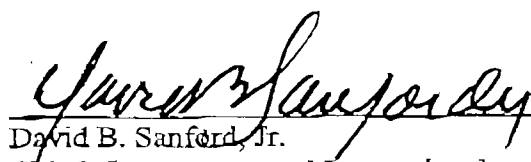
APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF LABOR:

 7-11-01  
\_\_\_\_\_  
James Perlmutter Date  
Director  
Office of Foreign Relations

 7-11-01  
\_\_\_\_\_  
Terrean Waters Date  
Budget Analyst  
Division of Financial Management Operations

 7-25-01  
\_\_\_\_\_  
Daniel P. Murphy Date  
Director  
Procurement Services Center

APPROVED AND ACCEPTED FOR THE U.S. ARMY CORPS OF ENGINEERS

 10 JUL 2001  
\_\_\_\_\_  
David B. Sanford, Jr. Date  
Chief, Interagency and International  
Services Division  
Directorate of Military Programs